Supreme Court, U.S.
FILED
JUL 29 1991
OFFICE OF THE CLERK

No. 91-57 (2)

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

IRENE B. WOFFORD,

Petitioner,

vs.

DEPARTMENT OF PUBLIC SOCIAL SERVICES OF THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, SECOND APPELLATE DISTRICT DIVISION FOUR, OF THE STATE OF CALIFORNIA

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTIONS

1. ARE PETITIONER'S CHALLENGES TO THE JUVENILE COURT'S DEPENDENCY JURISDICTION OVER JOHN DAVID WOFFORD AND TO THE ORDERS THAT THE CHILDREN'S ADDRESS AND TELEPHONE NUMBER BE KEPT CONFIDENTIAL TIMELY?
2. DID THE 1989 REVISION OF CALIFORNIA WELFARE AND INSTITUTIONS CODE SECTION 300 AUTOMATICALLY TERMINATE THE JUVENILE COURT'S DEPENDENCY JURISDICTION OVER JOHN DAVID WOFFORD?
3. DO EITHER OF THE FOREGOING QUESTIONS STATE A FEDERAL ISSUE OF SUFFICIENT MAGNITUDE TO JUSTIFY GRANTING CERTIORARI?

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DEPARTMENT OF PUBLIC SOCIAL SERVICES OF THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

Although petitioner purports to seek review only of the unpublished decision of the California Court of Appeal issued on January 22, 1991, it is important to understand that that decision was preceded by an earlier one on November 17, 1989, which dealt with some of the issues raised in the current petition for certiorari.

The November 17, 1989 opinion appears in the Appendix, pp. A1 - A4.

The January 22, 1991 opinion is set out at pp. A15 - A38 of the Appendix.

STATUTES INVOLVED

The statute involved in this case is Section 300 of the California Welfare and Institutions Code ("WIC"). It appears in the Appendix, both as it read when John David Wofford was first detained in 1987, and as it reads now:

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No. 91-57

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v.

DEPARTMENT OF PUBLIC SOCIAL SERVICES OF THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA,

Respondent.

STATEMENT OF THE CASE

On April 8, 1987, respondent Department of Public Social Services of the County of Los Angeles filed a petition to have John David Wofford and his sister, Irene, made dependent children of the Juvenile Court.

The dependency petition alleged that the children's parents, petitioner and her husband, had failed to obtain needed medical attention for the

children in a timely manner; had inflicted numerous bruises and injuries on John's body; had kept a filthy home; and had subjected the children to rejection and to verbal and physical harassment. (The exact text of the allegations is set out at Appendix, pp. A57 - A58.)

The amended version of the petition to which petitioner and her husband ultimately pleaded "no contest" stated merely that the children had special and unique problems, and that there existed, due to the children's allegations, a family dysfunction so severe that the assistance of the court was required. (The exact text of the allegations as amended is set out in the Appendix, p.A59.)

On April 30, 1987, the court appointed counsel to represent petitioner and her husband. The children, at the time, were staying in their older sister's home; and the court's minute order expressly arranged for Wednesday evening visits with the parents.

On June 2, 1987, however, the court ordered that the minors' address be kept confidential from the parents, and noted that extra security might be necessary for the parties' next court appearance.

The adjudication of the petition was on July 21, 1987. Petitioner and her husband entered a "no contest" plea to the petition as amended. The court found both minors to be dependent children as described in WIC Section 300(a) and entrusted them to

respondent's custody. They remained placed in the home of their older sister, Sharon. The court ordered individual counseling for the children and for the parents, as well as family counseling. Respondent was given discretion in arranging visitation.

In connection with its review on November 17, 1987, the court reaffirmed that the children's address was to remain confidential.

The permanency planning hearing required by WIC Section 366.25 was originally scheduled for May 17, 1988, but was continued to July 14, September 20, October 24, and December 8, 1988. The September 20 order was the object of an earlier appeal by petitioner. In addition to continuing the permanency planning hearing, the order also

prohibited petitioner and her husband from putting the children under surveillance and from trying to obtain independent information about the minors either from their physician or their therapist. Respondent was ordered to notify petitioner's counsel if either child developed a medical problem.

In its unpublished opinion of November 17, 1989, the California Court of Appeal dismissed the appeal as it applied to the older child, Irene, on the ground that it was moot as to her, and affirmed the September 20 order as it applied to John David.

The objects of the present appeal are the Juvenile Court's permanency planning order of October 24, 1989 (Appendix, pp. A60 - A61) and the December 27, 1989 denials of

supplemental petitions in which petitioner sought custody of John David and termination of the court's jurisdiction over him based on allegedly changed circumstances. The Court of Appeal affirmed the acts of the Juvenile Court in its January 22, 1991 decision. To the extent that the appeal of the October 24 order was an attempt to challenge the original dependency jurisdictional adjudication, the appellate court pointed out that petitioner was foreclosed by her earlier "no contest" plea. Otherwise, the October 24, order presented "[n]o cognizable basis of judicial error ..." The denials of the supplemental petitions were likewise affirmed because there was insufficient evidence of changed circumstances and because the

1989 revisions of the relevant statutes were not to be applied retroactively. The unpublished opinion suggested, however, that the revisions might serve as a basis for a supplemental petition--i.e., change of circumstances.

Petitioner sought review by the California Supreme Court, which denied her petition on April 10, 1991.

ARGUMENT

1. PETITIONER'S CHALLENGES TO THE JUVENILE COURT'S DEPENDENCY JURISDICTION OVER JOHN DAVID WOFFORD AND TO THE ORDERS THAT THE CHILDREN'S ADDRESS AND TELEPHONE NUMBER BE KEPT CONFIDENTIAL ARE UNTIMELY.

The Juvenile Court took dependency jurisdiction over John David Wofford on July 21, 1987, after petitioner and her husband entered "no contest" pleas to the amended dependency petition.

The orders that the children's address and telephone number not be disclosed to the parents were issued on June 2 and November 17, 1987, and September 20, 1988. These orders were reviewed in petitioner's earlier appeal, affirmed on November 17, 1989.

Supreme Court Rule 13.1 requires the filing of a petition for writ of certiorari within 90 days after the entry of judgment. That precludes attacking the jurisdictional adjudication and the confidentiality orders in the present petition for writ of certiorari, which was filed on July 8, 1991, over a year and one half too late.

2. THE 1989 REVISION OF CALIFORNIA WELFARE AND INSTITUTIONS CODE SECTION 300 DID NOT AUTOMATICALLY TERMINATE THE JUVENILE COURT'S DEPENDENCY JURISDICTION OVER JOHN DAVID WOFFORD.

In arguing that the 1989 revision of WIC Section 300 "repeals" the use of "family dysfunction" as a legal basis for juvenile dependency jurisdiction, petitioner seems to concede that "family dysfunction" was an acceptable ground for jurisdiction in 1987 when John David Wofford was first detained.

The statement of legislative intent which was added with the 1989 revision, however, negates any intent to narrow the bases for jurisdiction:

> "It is the intent of the Legislature in enacting this section to provide maximum protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to protect children who are at risk of that harm..."

Far from reducing jurisdictional scope, the declaration of intent calls for "maximum protection" for children actually being abused or neglected, or at risk of abuse or neglect.

Both federal and California authority recognize that statutes should be construed to implement legislative intent, even if that necessitates expanding on some of the legislation's more narrowly drawn phrases. Blum v. Stenson (1984) 465 U.S. 886,892-896; 79 L.Ed.2d 891,898-900; 104 S.Ct. 1541,1545-1547; Friends of Mammoth v. County of Mono (1972) 8 Cal.3d 247,256-262.

The construction of WIC Section 300 urged by petitioner also conflicts with established authority that statutes are rarely to be applied retroactively.

Hannay v. Eve (1806) 7 U.S. 242,248; 3 Cranch 242,248; 2 L.Ed. 427,429; Interinsurance Exchange v. Ohio Casualty Insurance Co. (1962) 58 Cal.2d 142,146-148. Except for the statement of legislative purpose, retroactive application of the 1989 revision of Section 300 might compel the automatic release of abused and neglected children to the homes in which they suffered the abuse and neglect - scarcely a reasonable legislative objective.

3. NEITHER OF THE FOREGOING QUESTIONS STATES A FEDERAL ISSUE OF SUFFICIENT MAGNITUDE TO JUSTIFY GRANTING CERTIORARI.

Recognizing that the preferred types of cases described in Rule 10 are not exhaustive, respondent nevertheless submits that the questions posed by the present petition are not of the same order as conflicts between federal

circuits or state supreme courts on important federal issues. Indeed, the only argument of petitioner which is not barred by Rule 13.1 is based on giving devastatingly limiting retroactive effect to a statutory revision, the stated aim of which is to afford maximum protection.

CONCLUSION

For the foregoing reasons, respondent submits that the petition for writ of certiorari filed in this case should be denied.

Dated: July 25, 1991

Respectfully submitted,

DE WITT W. CLINTON
County Counsel
JOE BEN HUDGENS
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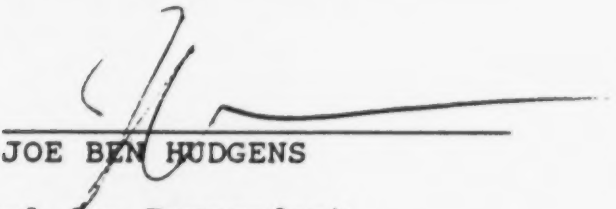
By 
JOE BEN HUDGENS

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APPENDIX A

November 17, 1989 Opinion of the California Court of Appeal

NOT FOR PUBLICATION
IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re John W. and Irene W.,	No. B038588
Minors.	(Super.Ct. No. J972868)
DEPARTMENT OF CHILDREN'S SERVICES,	
Petitioner and Respondent.	
v.	
IRENE W.,	
Objector and Appellant.	

APPEAL from a judgment (order) of the Superior Court of Los Angeles

County, E. Horowitz, Temporary Judge.*

Dismissed in part; affirmed.

Irene W., in pro. per., for Objector and Appellant.

De Witt W. Clinton, County Counsel, Sterling Honea, Senior Deputy County Counsel and Joe Ben Hudgens, Senior Deputy County Counsel for Petitioner and Respondent.

On July 21, 1987, Irene W. and John W. were adjudged to be dependent children of the juvenile court under Welfare and Institutions Code section 300, subdivision (a).[1] This adjudication was made after the minors' mother (appellant) and father pleaded no

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* (Pursuant to Cal. Const., art. VI, §21.)

[1] All statutory referenced herein are to the Welfare and Institutions Code.

contest to an amended petition in which it was alleged that the assistance of the juvenile court was required because the "minors have special and unique problems" and "there exists a family dysfunction of a severe nature due to allegations made by minors."

At the adjudication hearing, the juvenile court ordered, among other things, that each minor be suitably placed and receive individual counseling. The minors were originally placed with their adult sister Sharon but later left for other placements.

The permanency planning hearing (§ 366.25) which was originally scheduled for May 17, 1988, was continued to July 14, 1988, September 20, 1988, and December 8, 1988.

This appeal is taken solely from the order of September 20, 1988, wherein the juvenile court ordered that the minors continue as dependents of the juvenile court; that the suitable placement order of July 21, 1987, remain in full effect; that the permanency planning hearing be continued to December 8, 1988; that appellant and her husband are prohibited from placing the minors under surveillance; that the parents are prohibited from trying to obtain independent information about the minors from their treating therapist or medical physician; and that the Department of Children's Services (respondent) is required to notify parents' counsel if either minor develops a medical problem.

ISSUES ON APPEAL

Presented for resolution in this appeal are the following issues:

1. Is the September 20, 1988, minute order appealable?

2. If so, is this appeal moot as to Irene W.?

3. Should the September 20, 1988, minute order be reversed?

DISCUSSION

I

In reliance on section 366.25, subdivision (j) and In re T.M. (1988) 206 Cal.App.3d 314, respondent contends that the September 20, 1988, minute order from which this appeal is taken is not appealable.

Section 336.25 [sic], subdivision (j) which became effective on January 1, 1989, states that "[a]n order by the

court that authorizes the filing of a petition to terminate parental rights pursuant to Section 232 or that authorizes the initiation of guardianship proceedings is not an appealable order but may be the subject of review by extraordinary writ."

In In re T.M., supra, 206 Cal.App. 3d 314, 316, the court in reliance on section 366.25, subdivision (i) which, as enacted in 1987, states that 366.25 "applies to minors adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 prior to January 1, 1989," held that subdivision (j) of section 366.25 applied retroactively thereby terminating appeals perfected prior to January 1, 1989.

Respondent contends that if a parent cannot appeal an order authorizing the filing of a petition to terminate parental rights or the initiation of guardianship proceedings which would normally be undertaken at the conclusion of a permanency planning hearing, then "the non-appealability of an interlocutory order issued before the completion of such a hearing should follow a fortiori." We disagree.

First of all, respondent's reliance on section 366.25, subdivision (j) and In re T.M., supra, is misplaced. The September 20, 1988, order from which this appeal is taken is not an order authorizing the filing of a petition to terminate parental rights or the initiation of legal guardianship proceedings.

Second, the right to appeal is strictly statutory, and the Legislature can terminate the right to appeal retroactively by legislation which clearly indicates an intent to affect pending appeals. (In re T.M., supra, 206 Cal.App.3d at p. 316; Martin v. Municipal Court (1983) 148 Cal.App.3d 693, 696; 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 3, pp. 34-35.) Although the Legislature has expressly and retroactively terminated the right to appeal from an order authorizing the initiation of proceedings to terminate parental rights and legal guardianship proceedings, it has not terminated the right to appeal from the sort of interim order which we review today. Until there is an expressed indication to the contrary from the Legislature, such

orders, which affect the substantial rights of the parents, remain appealable under section 395 which provides: "A judgment in a proceeding under Section 300 may be appealed from in the same manner as any final judgment, and any subsequent order may be appealed from as from an order after judgment;..." (See also, Cal.Rules of Court, rule 1396(b).)

II

On our own motion we have augmented the record on appeal to include the juvenile court's minute order of February 16, 1989, which is found in the superior court file. (Cal. Rules of Court, rule 12(a).) That minute order indicates that on February 16th of this year, the juvenile court terminated its dependency jurisdiction over the minor Irene W. As to her, therefore, this

appeal is moot and must be dismissed. (See Environmental Coalition of Orange County, Inc. v. Local Agency Formation Com. (1980) 110 Cal.App.3d 164, 170.)

III

Appellant asks this court to do the following:

1. "Remove Minor John David [W.] From Detrimental 'Care' of Department of Children's Services."

2. "Terminate Jurisdiction of Juvenile Court Over Minor John David [W.]."

3. "Return Custody of Minor John David [W.] to his Parents; Otherwise Emancipate Him."

The relief which appellant seeks on appeal was neither discussed nor argued at the September 20, 1988, hearing and

cannot be sought for the first time on appeal.

At the September 20, 1988, hearing, counsel for the minors stated that appellant and her husband had retained someone to surveil [sic] the minors and had obtained access to the minors' psychological and medical records. Counsel for the minors further stated that as the result of the latter, the minors had stopped receiving psychiatric treatment out of fear that their statements would get back to their parents. Based on these representations, the juvenile court issued an order prohibiting the parents from putting the minors under surveillance and from independently obtaining information about the minors from their treating therapist or medical

physician and also ordered respondent to notify counsel for the parents of any medical problem developed by either minor.

The juvenile court then continued the permanency planning hearing to December 8, 1988, and ordered that the minors remain dependents of the juvenile court and that the suitable placement order entered on July 21, 1987, remain in full effect.

We have thoroughly reviewed appellant's opening and reply briefs and conclude that she has failed to demonstrate that the September 20, 1988, order, or any part thereof, must be reversed.

Because the September 20th order is the only one being reviewed, any and all arguments made by appellant that do not

specifically pertain to the propriety of that particular order are not properly before us. We therefore cannot, and do not, address appellant's numerous attacks on other orders issued by the juvenile court in this case.

We further note that appellant's opening and reply briefs are replete with references to matters outside the record and arguments that were not presented below to the juvenile court. These references and arguments, too, are not properly before, and cannot be considered by, this court.

Also improperly before this court are appellant's claims that respondent has failed to comply with the juvenile court's September 20, 1988, order. Such concerns must, in the first instance, be presented to the court below.

DISPOSITION

Insofar as this appeal relates to the minor Irene W. it is dismissed as moot.

The remainder of the juvenile court's judgment (order) of September 20, 1988, is affirmed.

NOT FOR PUBLICATION
IN THE OFFICIAL REPORTS.

January 22, 1991 Opinion of the California Court of Appeal

NOT FOR PUBLICATION
IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re John W., A Person Coming Under the Juvenile Court Law.	No. B047534 (Super. Ct. No. J972868)
LOS ANGELES COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent. v. IRENE B. W., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, David M. Schacter, Judge. Affirmed.

Irene B. Wofford, in pro per, for Defendant and Appellant.

De Witt W. Clinton, County Counsel, Sterling Honea and Joe Ben Hudgens, Principal Deputy County Counsel, for Plaintiff and Respondent.

Appellant, Irene W., is the mother of a minor who has been declared a ward in dependency proceedings pursuant to Welfare and Institutions Code section 300.[1] She appeals from three orders of the juvenile court. Of these, the first maintained previous orders in full force and effect and directed the Los Angeles County Department of Children's Services ("DCS") to submit a progress report on a pending appeal. The other two orders

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[1] All code citations are to the Welfare and Institutions Code.

denied section 388 petitions for modification or termination of jurisdiction. Finding no judicial error, we shall affirm the determinations of the trial court.

FACTUAL AND PROCEDURAL SUMMARY

On April 8, 1987, a DCS Children's Services Worker filed a petition with the Juvenile Court in Los Angeles County. The petition sought a declaration of dependency status for John W. and his sister, both of whom were then minors. The petition included allegations under both subdivisions (a) and (d) of section 300. The subdivision (d) allegation asserted that the parental home was an unfit place because of neglect and abuse by appellant and her husband. The petition was amended at an adjudication hearing on July 21,

1987. All four counts of specific allegations under subdivision (a) were deleted, and the subdivision (d) count was dropped entirely. The amended petition alleged that the minors had no parent capable of and actually exercising proper and effective parental care and control; that they were in need of such care and control, and that they have "unique problems. Further there exists a family dysfunction of a severe nature due to allegations made by minors. Due to these circumstances, assistance of the juvenile court is required."

Following an admonition of rights, appellant and her husband (each represented by counsel) plead "no contest" to the amended petition. The court found that the allegations of the

amended petition were true; that "it would be detrimental for the minors to remain in parents'/guardian's custody;" and that "there is substantial danger to the physical/emotional health of the minors. No reasonable means exist to protect the minors without removal from the parents'/guardian's physical custody. Reasonable efforts have been made to prevent or eliminate the need for removal of the minors from his or her home and make it possible to return the minors from his or her home and make it possible to return the minors to his or her home." The court found each minor to be a dependent child under section 300, subdivision (a). It removed custody from appellant and her husband and ordered DCS to find a suitable placement. Weekly individual

counseling was ordered for the minors and for an adult sister; bi-weekly counseling was ordered for the parents. The parents also were ordered to participate in family counseling at the direction of a therapist. DCS was ordered to provide family reunification services, and the matter was placed on calendar for further review and a progress report.

Following this, a permanency planning hearing pursuant to section 366.25 was scheduled and continued on several occasions. This case was before us on the appeal from one of the orders continuing the section 366.25 hearing. We take judicial notice as requested by respondent of the record on that appeal. (Evid. Code, § 452, subd. (d), § 459,

subd. (a).)[2] That appeal was from an order of September 20, 1988, in which the juvenile court directed that the minors continue as dependents of the juvenile court, that the previous suitable placement order remain in full force and effect, that the permanency planning hearing be continued to December 8, 1988, that appellant and her husband not surveil [sic] the minors or attempt to obtain information about them from their treating therapist or medical physician, and that DCS notify the parents' counsel if either minor develops a medical problem. We ruled that the order was appealable but that the appeal had become moot as to John's

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[2] Our previous decision was rendered in an unpublished opinion, B038588, styled In re John W. and Irene W., Minors.

sister, and on the merits, we found no error in the orders of the juvenile court concerning John. We therefore dismissed the appeal as to the sister and otherwise affirmed.

Shortly before our decision was announced, the juvenile court made another of its status quo orders. This order, of October 24, 1989, maintained all previous orders in full force and effect, ordered John to remain in therapy, directed DCS to inform the court of the status of the pending appeal and the outcome of a personal injury lawsuit, and continued the matter to January 25, 1990 for further judicial review. This is the first of the three orders from which the instant appeal is taken.

Appellant filed petitions under section 388 on November 20, 1989, and December 15, 1989, seeking new hearings and a termination of juvenile court jurisdiction. These petitions were denied in separate orders issued on December 27, 1989. There are other orders from which appellant appeals.[3]

DISCUSSION

A. Appealability

The right to appeal a juvenile court adjudication is entirely statutory. (In re T.M. (1988) 206 Cal. App.3d 314, 316.) The governing

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[3] Neither appeal document is captioned "Notice of Appeal." The first is styled "Appeal of 10-24-89 Minute Order," and the second "Emergency Appeal from Juvenile Court." Each was filed with the clerk of the trial court, and we regard both of them as being in compliance with the Rules on Appeal governing notice and timeliness. (Cal. Rules of Court, rules 1, 2.)

provision in dependency cases is section 395, which provides in pertinent part that "[a] judgment in a proceeding under Section 300 may be appealed from in the same manner as any final judgment, and any subsequent order may be appealed from as from an order after judgment;... A judgment or subsequent order entered by a referee shall become appealable whenever proceedings pursuant to Section 252, 253, or 254 have become completed or, if proceedings pursuant to Section 252, 253 or 254 are not initiated, when the time for initiating the proceedings has expired."

The July 21, 1987 order declaring John to be a dependent ward and removing him from the custody of his parents was made by a judge of the superior court, and is an appealable order. (See In re

Corey (1964) 230 Cal.App.2d 813, 820 [appeal from order made under section 778, from which section 388 is derived, is appealable]; cf. In re Timothy N. (1975) 48 Cal.App.3d 862, 867; cf. § 249 [removal order of referee not yet approved by judge is not appealable].) Consequently, subsequent orders, including those from which review is sought in the instant proceeding, are appealable.

B. The October 24, 1989 Order

As we have seen, this order simply maintained previous orders in full force and effect, directed that the minors remain in therapy, and set a further hearing at which DCS was ordered to provide a status report on the appeal then before us, and on a pending civil suit for personal injuries (apparently

brought on behalf of the minor). In her attachments to the "appeal" filed with the trial court, and on appeal, appellant attacks the original wardship determination, argues that the court refused to enforce its order that DCS arrange family reunification service, argues that the permanency planning hearing should not be held, and provides an unauthenticated list of maladies and symptoms which she claims John is suffering as a ward and which did not afflict him when he was with his parents. But petitioner submitted to the original dependency adjudication by her "no contest" plea to the section 300 petition, and she cannot now be heard to attack the original validity of the ensuing order. That order of October 24 maintained all other orders then in

effect. The only thing that it added was a direction to DCS to provide a status report about the outcome of the appeal and personal injury matters, then pending. No cognizable basis of judicial error is presented with respect to the order. Finding no error, we shall affirm the order.

C. The Order Denying the November 20, 1989 Section 388 Petition

Section 388 authorizes "[a]ny parent... having an interest in a child who is a dependent child of the juvenile court... upon grounds of change of circumstance or new evidence, [to petition] the court... for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court." The petition must be verified and "set forth in concise language any change of

circumstance or new evidence which are alleged to require such change of order or termination of jurisdiction."

If it appears that the best interests of the child may be promoted by the proposed change or order of termination of jurisdiction, the court is to order a hearing and cause notice to be given.

Section 388 is derived from a more general provision, section 778. It has been held that in reviewing a petition under section 778, "the trial court must necessarily consider the matters which formed the basis of the order previously made in order to ascertain whether there has been a 'change of circumstance' or 'new evidence' warranting a change, modification or setting aside of such

previous order." (In re Corey, supra, 230 Cal.App.2d at p. 831.)

While the burden of establishing the basis for a wardship is initially on the party seeking that order (the DCS in this case), once the order is made, the burden of showing that there is a changed circumstance or new evidentiary matter warranting a modification is with the parent or other person seeking that change. (See In re B.G. (1974) 11 Cal.3d 679,691; In re Francecisco (1971) 16 App.3d 310,314.) "[T]he modification or termination of an order previously made by a juvenile court rests within its discretion, and its order of granting or refusing an application for modification or termination may not be disturbed unless there has been an abuse

of discretion." (In re Corey, supra, 230 Cal.App.2d at 832.)

Appellant's November 20, 1989 petition asserted that DCS disobeyed court orders in the following respects: failure to obey parental visitation orders; moving the minors without a court hearing and agreement "of all parties concerned"; disobedience of the order for family reunification services; refusal to take the minors to an organization that provides such services and, instead, taking them to one that did not; and refusal to give medical information to the parents, their attorney or to relatives.

The only documents presented to support these allegations are copies of court minute orders directing visitation, child reunification

services, therapy and counseling, and a letter to DCS from the "Director of Adult Services" of Pacific Clinics. In that letter, the author states that the clinic does not offer family reunification services "per se," and that a discussion with appellant "turned up no specific individual issues she should work on or that she wanted to work on," a prerequisite to the clinic's taking patients in appellant's geographic area. (Emphasis in original.)

This is an insufficient showing of disobedience by DCS of court orders. But even if it were sufficient, the remedy for such disobedience would be an appropriate enforcement order, such as an order for sanctions. Absent a showing that the best interest of the child warranted a change in the order

for visitation, reunification services, therapy and counseling, the court would have no basis to change its order, much less to terminate the entire dependency proceeding, as appellant asked it to do.

Such termination appears to be the objective of appellant's petition. In it she asked for custody of John, claimed that he is being illegally detained by DCS, and, without supporting declarations, denied that he has been abused and neglected while in the care of DCS.

We find no abuse in discretion in the denial of the November 20, 1989 petition.

D. The Order Denying the December 15, 1989 Section 388 Petition

In her second section 388 petition, appellant again argued that DCS had no right to detain John as against the

paramount rights of his parents. She also argued that John is eligible for welfare benefits as a legally blind person, and that "[i]t is public knowledge that the state places in Group Homes teenagers [sic] who are on probation and who have been on drugs," and that John's placement in such a facility would violate the rights of his parents. Appellant also attached a one-page, unauthenticated chart that apparently seeks to compare John's physical condition under DCS jurisdiction with his condition when he was with his parents. All of this was either previously argued and rejected, was factually unsupported, or both.

One argument was presented, however, that had not been argued before: that "family dysfunction" is no

longer a basis for a determination of dependency. This argument is substantially amplified in appellant's opening brief. The argument is, in essence, that section 300, subdivision (a) was amended and that the present version of the statute does not cover the situation that had been presented to the court.

The new version, which became operative on January 1, 1989 (Stats. 1987, ch. 1485, § 4) requires a showing of substantial risk that "the minor will suffer, serious physical harm inflicted nonaccidentally upon the minor by the minor's parent or guardian."[4]

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[4] The entire subdivision now reads:

"(a) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm inflicted nonaccidentally upon the minor by the minor's parent or guardian. For

Since the amended petition to which appellant and her husband entered a "no contest" plea contained no such allegations, she argues that the resulting detention order is no longer valid.

We do not agree. First, we examine the actual language of the statute. It provides that "Any minor who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that

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the purpose of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the minor or minor's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, 'serious physical harm' does not include reasonable and age appropriate spanking to the buttocks where there is no evidence of serious physical injury."

person to be a dependent child of the court." It speaks as to what the court may do in the future; it does not address the effectiveness of orders already made. It is, of course, a general maxim of statutory construction that statutory amendments are not retroactively applied to invalidate prior acts unless a legislative intent to effect such invalidation clearly appears. (See Interinsurance Exchange v. Ohio Cas. Ins. Co. (1962) 58 Cal.2d 142, 149.) The statutory language in this case not only does not demonstrate an intent that the statute be retroactively applied, its use of present tense language in the opening provision is inconsistent with that result.

The construction argued by appellant would result in unchecked mischief, as any number of section 300, subdivision (a) wardship determinations, valid when made, would be undone because the pleading or proof did not satisfy the new standard. The problem is compounded by the successive changes that have been made to section 300. The present version was to expire on January 1, 1990, but was extended until the end of 1991, when still another version is to go into effect. (See Stats. 1987, ch. 1485, § 4.5, and Stats. 1989, ch. 913, §§ 3 and 4; see discussions in 2 California Juvenile Court Practice, § 15.1 (CEB, 1990 Supp.).)

We do agree that the statutory change presents a basis for a parent whose child was declared a dependent

under the earlier version, to request a change of status under section 388. The juvenile court may consider the change in law, together with all of the merits of the case, in deciding whether to change its previous order. Presumably, the juvenile court did so pursuant to appellant's petition, and determined that a change was not appropriate. There is no showing that it abused its discretion.

CONCLUSION

The orders appealed from are affirmed.

NOR FOR PUBLICATION IN
THE OFFICIAL REPORTS

1987 Version of California Welfare and Institutions Code Section 300

300. Persons within jurisdiction of court. Any person under the age of 18 years who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

(a) Who is in need of proper and effective parental care or control and has no parent or guardian, or has no parent or guardian willing to exercise or capable of exercising care or control, or has no parent, guardian, or custodian actually exercising care or control.

(b) Who is destitute, or who is not provided with the necessities of life, or who is not provided with a home

or suitable place of abode, except that no person may be adjudged a dependent child solely due to the lack of an emergency shelter for the family.

(c) Who is physically dangerous to the public because of a mental or physical deficiency, disorder, or abnormality.

(d) Whose home is an unfit place for him or her by reason of neglect, cruelty, depravity, or physical abuse of either of his or her parents, or of his or her guardian or other person in whose custody or care he or she is.

(e) Who is under the age of three and whose home is an unfit place for him or her as a result of severe physical abuse of the minor by a parent, or by any person known by the parent, if the parent knew or reasonably should have

known that that person was physically abusing the minor. For the purpose of this section, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, it would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(f) Who has been freed for adoption from one or both parents for 12 months by either relinquishment or

termination of parental rights and for whom an interlocutory decree has not been granted pursuant to Section 224n of the Civil Code or an adoption petition has not been granted.

(g) It is the intention of the Legislature in enacting the amendments to subdivision (a) enacted at the 1985-86 Regular Session, to assure that courts, in making a determination pursuant to subdivision (a) shall not focus upon the fact that a parent has a physical disability. The Legislature declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to subdivision (a) should center upon whether a

parent's disability prevents him or her from exercising care and control.

(Amended by Stats. 1978, Ch. 539; Stats. 1982, Ch. 977, operative 10/1/82; Stats. 1985, Ch. 1548; Stats. 1986, Ch. 1122.)

Present Version of California Welfare and Institutions Code Section 300

300. Persons within jurisdiction of court. Any minor who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court.

(a) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm inflicted nonaccidentally upon the minor by the minor's parent or guardian. For the purpose of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the minor or the minor's siblings, or a combination

of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age appropriate spanking to the buttocks where there is no evidence of serious physical injury.

(b) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the minor, or the willful or negligent failure of the minor's parent or guardian to adequately supervise or protect the minor from the conduct of the custodian with whom the minor has been left, or by the willful or

negligent failure of the parent or guardian to provide the minor with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the minor due to the parent's or guardian's mental illness, developmental disability, or substance abuse. No minor shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a minor comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical

treatment, nontreatment or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the minor from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian (2) the risks to the minor posed by the course of treatment or nontreatment proposed by the parent or guardian (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The

minor shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the minor from risk of suffering serious physical harm or illness.

(c) The minor is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No minor shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious

belief and if a less intrusive judicial intervention is available.

(d) The minor has been sexually abused, or there is a substantial risk that the minor will be sexually abused, as defined in subdivision (b) of Section 11165 of the Penal Code, by his or her parent or guardian or member of his or her household, or the parent or guardian has failed to adequately protect the minor from sexual abuse when the parent or guardian knew or reasonably should have known that the minor was in danger of sexual abuse.

(e) The minor is under the age of five and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the minor.

For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness. A minor may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the probation

officer has made an allegation of severe physical abuse pursuant to Section 332.

(f) The minor's parent or guardian has been convicted of causing the death of another child through abuse or neglect.

(g) The minor has been left without any provision for support; or the minor's parent has been incarcerated or institutionalized and cannot arrange for the care of the minor; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent is unknown, and reasonable efforts to locate the parent have been unsuccessful.

(h) The minor has been freed for adoption from one or both parents for 12

months by either relinquishment or termination of parental rights and an interlocutory decree has not been granted pursuant to Section 224n of the Civil Code or an adoption petition has not been granted.

(i) The minor has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the minor from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the minor was in danger of being subjected to an act or acts of cruelty.

(j) The minor's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the

minor will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the minor.

It is the intent of the Legislature in enacting this section to provide maximum protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to protect children who are at risk of that harm. This protection includes provision of a full array of social and health services to

help the child and family and to prevent reabuse of children. That protection shall focus on the preservation of the family whenever possible. Nothing in this section is intended to disrupt the family unnecessarily or to intrude inappropriately into family life, to prohibit the use of reasonable methods of parental discipline, or to prescribe a particular method of parenting. Further, nothing in this section is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to

promote services which support family maintenance and family reunification plans, such as client transportation out-of-home respite care, parenting teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control.

As used in this section "guardian" means the legal guardian of the child.

This section shall remain in effect only until January 1, 1990, and as of that date is repealed, unless a later enacted statute, which is enacted before

January 1, 1990, deletes or extends that date.

(Stats 1987 ch 1485--Operative 1/1/89 until 1/1/90)(First of two)

Original Dependency Petition Text

MINORS NORMALLY RESIDE IN THE HOME OF THEIR PARENTS, AND:

COUNT I: ON NUMEROUS OCCASIONS MINORS' PARENTS HAVE ENDANGERED MINORS PHYSICAL HEALTH AND SAFETY BY FAILING TO OBTAIN NEEDED MEDICAL ATTENTION IN A TIMELY MANNER.

COUNT II: ON AN ONGOING BASIS MINORS' PARENTS HAVE INFLICTED NUMEROUS BRUISES AND INJURIES ON MINOR JOHN'S BODY. SUCH PUNISHMENT WAS EXCESSIVE AND CAUSED SAID MINOR UNREASONABLE PAIN AND SUFFERING.

COUNT III: ON AN ONGOING BASIS MINORS' HOME IS FOUND TO BE IN A FILTHY, UNSANITARY, AND UNHEALTHY CONDITION. SUCH CONDITION INCLUDED STACKS OF DIRTY DISHES AND AN INFESTATION OF INSECTS.

COUNT IV: MINORS' PARENTS HAVE ESTABLISHED A HOME ENVIRONMENT THAT IS DETRIMENTAL TO MINORS' PHYSICAL AND EMOTIONAL HEALTH AND SAFETY. DETRIMENTAL FACTORS INCLUDE, BUT ARE NOT LIMITED TO, OVERT REJECTION BY PARENTS, AND CONTINUOUS VERBAL AND PHYSICAL HARRESSMENT [sic] BY PARENTS.

PARAGRAPH II SUBDIVISION D: THE HOME OF SAID MINORS IS AN UNFIT PLACE FOR SAID MINORS BY REASON OF THE NEGLECT, CRUELTY, PHYSICAL AND EMOTIONAL ABUSE BY PARENTS, JOHN AND IRENE WOFFORD, FOR THE FOLLOWING REASONS: THE FACTS AS SET FORTH IN PARAGRAPH I ABOVE ARE HEREBY INCORPORATED AND MADE PART HEREOF.

Amended Dependency Petition Text

MINORS NORMALLY RESIDE IN THE HOME OF THEIR PARENTS, AND:

COUNT I: MINORS HAVE SPECIAL AND UNIQUE PROBLEMS. FURTHER, THERE EXISTS A FAMILY DYSFUNCTION OF A SEVERE NATURE DUE TO ALLEGATIONS MADE BY MINORS. DUE TO THESE CIRCUMSTANCES, ASSISTANCE OF THE JUVENILE COURT IS REQUIRED.

Text of Trial Court's October 24, 1989 Permanency Planning Order

MATTER IS BEFORE THE COURT FOR PERMANENCY PLANNING HEARING WIC 366.25 RE: WIC 300 PETITION FILED 4-8-87

Court finds notice of proceedings has been given as required by law.

Court finds report received from DCS.

THE COURT ORDERS:

Minor is continued as a dependent child of the Court under WIC 300, Subdivisions A.

Order for SUITABLE PLACEMENT dated 7-21-87 to remain in full force and effect.

All prior orders to remain in full force and effect.

Minor to remain in therapy.

DCS to furnish report on outcome of appeal and status on outcome of all [illegible] personal injury lawsuit.

THE MATTER IS CONTINUED:

APPEARANCE CALENDAR of 1-25-90 in Dept. 237 for JUD. REV.